

# STABILIZATION AND RECONSTRUCTION OPERATIONS DOCTRINE AND THEORY

A Monograph

by

LTC Robert M. Gambrell  
United States Army



School of Advanced Military Studies  
United States Army Command and General Staff College  
Fort Leavenworth, Kansas

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Name of Candidate: LTC Robert M. Gambrell

Monograph Title: Stabilization and Reconstruction Operations Doctrine and Theory

Approved by:

\_\_\_\_\_, Monograph Director  
Daniel G. Cox, Ph.D.

\_\_\_\_\_, Seminar Leader  
Craig Berryman, COL, FA

\_\_\_\_\_, Director, School of Advanced Military Studies  
Henry A. Arnold III, COL, IN

Accepted this 22nd day of May 2014 by:

\_\_\_\_\_, Director, Graduate Degree Programs  
Robert F. Baumann, Ph.D.

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## ABSTRACT

STABILIZATION AND RECONSTRUCTION OPERATIONS DOCTRINE AND THEORY, by LTC Robert M. Gambrell, 49 pages.

There has been much controversy particularly within professional circles regarding the adequacy of US stabilization and reconstruction (S&R) doctrine over the past decade of its practice most notably in Iraq and Afghanistan. This monograph seeks to answer the question does current S&R doctrine capture the best theory and understanding of practice as offered by the literature? It will use the functions of security, rule of law and private property rights to determine the degree to which the doctrine and literature are consistent. First it will examine the literature in order to frame the scholarly discussion and determine what constitutes best theory and understanding of practice. Next it will examine the relevant S&R doctrine in order to develop the basis for comparison. Finally, it will compare and contrast the doctrine to determine how well doctrine reflects the most current scholarly thought as it pertains to S&R operations.

## TABLE OF CONTENTS

	Page
TABLE OF CONTENTS .....	iv
ACRONYMS .....	v
INTRODUCTION .....	1
METHODOLOGY .....	3
GENERAL OVERVIEW OF STABILIZATION AND RECONSTRUCTION LITERATURE...	3
SECURITY .....	6
Security in Scholarly Literature .....	6
Security in Doctrine .....	13
Comparison of Security in Literature and Doctrine .....	18
RULE OF LAW .....	25
Rule of Law in Scholarly Literature .....	25
Rule of Law in Doctrine .....	31
Comparison of Rule of Law in Literature and Doctrine .....	33
PRIVATE PROPERTY RIGHTS .....	35
Private Property Rights in Scholarly Literature .....	36
Private Property Rights in Doctrine .....	44
Comparison of Private Property Rights in Doctrine and Literature .....	45
CONCLUSION .....	45
BIBLIOGRAPHY .....	50

## ACRONYMS

CARL	Combined Arms Research Library
CBRN	Chemical, Biological, Radiological, and Nuclear
CGSC	U.S. Army Command and General Staff College
DDR	Disarmament, Demobilization, and Reintegration
DOS	Department of State
FHA	Foreign Humanitarian Assistance
FID	Foreign Internal Defense
GIROA	Government of the Islamic Republic of Afghanistan
HCA	Humanitarian and Civic Assistance
HN	Host Nation
IDP	Internally Displaced Person
IED	Improvised Explosive Device
ISR	Intelligence, Surveillance, and Reconnaissance
JFC	Joint Force Commander
MCA	Military Civic Action
MMAS	Master of Military Art and Science
NA	Nation Assistance
NATO	North Atlantic Treaty Organization
OE	Operational Environment
ROE	Rules of Engagement
ROK	Republic of Korea
SAMS	School of Advanced Military Studies
SSR	Security Sector Reform
USACE	United States Army Corps of Engineers
USG	United States Government
UXO	Unexploded Ordnance

## INTRODUCTION

During the past decade of war the United States and its coalition partners have invested significant time, money, and organizational energy conducting stability and reconstruction (S&R) operations, principally in Iraq and Afghanistan, with little enduring success. When the United States deposed the regime of Saddam Hussein in Iraq in 2003, it did so with the expectation that it would defeat the Iraqi Army but find a functional and legitimate state intact.<sup>1</sup> However, the previous 13 years of sanctions and three wars in two decades had already pushed Iraqi administrative and government systems to the brink of collapse—which they did in short order after the US led invasion.<sup>2</sup> This, coupled with insufficient coalition force structure, created both a “security vacuum” and interrupted basic and administrative service provision to Iraqis. The security vacuum that led to lawlessness and looting in the short term and full blown insurgency in the long term.<sup>3</sup> Attempts by the United States and United Kingdom to quickly train and deploy indigenous Iraqi Security Forces (ISF) to combat the insurgency yielded few durable gains. Within this framework of insecurity, long-term S&R efforts were largely ineffective.<sup>4</sup> There was and still is some professional debate within the force that our S&R doctrine is not sufficiently developed in terms of detail and scope to address these challenges.<sup>5</sup>

Doctrine adequately addresses stabilization and reconstruction operations if one only focuses on population-centric COIN and disregards private property as an important S&R task.

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<sup>1</sup>Toby Dodge, “Iraq: The Contradictions of Exogenous State-Building in Historical Perspective,” *Third World Quarterly* 27, no. 1 (2006): 187–200.

<sup>2</sup>Ibid.

<sup>3</sup>Ibid.

<sup>4</sup>Ibid.

<sup>5</sup>Richard Sisk, “COIN Doctrine Under Fire,” *DoD Buzz*, <http://www.dodbuzz.com/2013/11/19/coin-doctrine-under-fire/> (accessed 5 May 2014).

Because doctrine generally captures the best theory and understanding of practice from scholarly literature focusing on population-centric COIN and S&R as demonstrated by this examination of doctrine and theoretical works, it may fall short of providing adequate guidance in all COIN and S&R situations. Joint Doctrine adequately captures best theory and understanding of practice as demonstrated by the discussion of security as fundamental to other S&R efforts, as necessary for legitimate governance, and in terms of determining the right size and scope of the S&R force for large footprint interventions. However, one has to go to Army doctrinal publication ADP 3-05 for an examination of small footprint COIN and S&R operations. Doctrine adequately captures best theory and understanding of practice as demonstrated by the discussion of rule of law. Rule of law consists of a state monopoly on the legitimate use of force. The doctrine also captures the need to consider cultural context, and the property of rule of law as providing certainty and predictability. Overall, doctrine only partially captures the best theory and understanding of practice as illustrated by the somewhat superficial discussion in the doctrine compared to the more detailed discussion found in the literature.

The doctrine and literature also discuss humanitarian assistance as an element of statebuilding and S&R. Humanitarian assistance is absolutely critical to prevent death and human suffering from disease and hunger and is indeed required under the law of armed conflict. Humanitarian aid however addresses immediate and pressing concerns but does not constitute the establishment or maintenance of a system which enables sustained stability. Governance is another theme common thorough the joint doctrine and literature. Enabling governance is an overarching, broad and critical goal which consists of several contributing elements and systems. Security, rule of law, and private property rights each enable and legitimize governance. These three S&R functions represent potentially interdependent systems which have the potential to be self-sustaining and complementary.

## METHODOLOGY

This monograph will examine the foundational doctrine of S&R specifically as it relates to security, rule of law, and private property rights. The doctrinal publications concerned are JP 3-24, *Counterinsurgency*, JP 3-07, *Stability Operations*, JP 3-07.3, *Peace Operations*, FM 3-24, *Counterinsurgency*, and ADP 3-05, *Special Operations*. These publications were chosen because together they address the spectrum of S&R operations. It will then examine relevant S&R literature that pertains to these three conditions. From this examination it will then compare and contrast the doctrine to answer the primary research question of does current S&R doctrine capture the best theory and understanding of practice as offered by the literature?

This monograph is relevant to operational planners because doctrine is not intended as a proscriptive or prescriptive solution to every problem. S&R operations are typically conducted in the context of a complex adaptive system where doctrine might not be adequate to help the commander understand, visualize, describe, and lead the S&R effort in this fluid environment. It is important and relevant then to balance doctrine against theory so that commanders and planners have the most current and relevant body of thought at their disposal. It is also important to understand if there are any important theoretical considerations that are not being captured in doctrine and if all types of COIN and S&R environments are adequately addressed by doctrine.

## GENERAL OVERVIEW OF STABILIZATION AND RECONSTRUCTION LITERATURE

This monograph will discuss the S&R literature in detail in each section as it relates to the respective doctrine and functions. A brief overview is in order here to provide context. The literature that can inform S&R operations spans several academic disciplines. Like the doctrine, there is considerable overlap and some sources will span more than one category. The overwhelming majority of S&R literature published since the end of the Cold War consists of case studies of S&R efforts in Bosnia—Herzegovina, Kosovo, East Timor, and of course Iraq and Afghanistan. A notable exception is *Guiding Principles for Stabilization and Reconstruction*, a

joint publication of the United States Institute for Peace and the United States Army Peacekeeping and Stability Operations Institute.<sup>6</sup> This is a broad and prescriptive document which attempts to provide “comprehensive strategic guidance,” though its focus is actually operational, to the myriad NGOs and IGOs operating alongside US forces in S&R operations in order for their efforts to be synchronized with and complementary to each other.<sup>7</sup> This publication divides its discussion into two levels consisting of five endstates and seven cross-cutting principles. The five endstates which should be sought in S&R are operations of safe and secure environment, rule of law, stable governance, sustainable economy, and social well-being. The degree to which these endstates fail or succeed are framed in terms of the perception of the HN population.<sup>8</sup> These endstates are overlaid by seven cross-cutting principles of host nation ownership and capacity, political primacy, legitimacy, unity of effort, security, conflict transformation, and regional engagement.<sup>9</sup> Each of these principles is defined as interdependent with and undergirding of each of the five endstates. They are also intended to apply to every actor across every endstate from the soldier, to the UN Security Council, to an HN elected official.<sup>10</sup> Many of the precepts discussed in this volume draw from the doctrine as well as statebuilding and peacebuilding literature.

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<sup>6</sup>Use of the term “joint” in this instance refers to the collaboration between the two authoring agencies. This publication does not constitute inter-service or army doctrine.

<sup>7</sup>United States Institute of Peace and US Army Peacekeeping and Stability Operations Institute, *Guiding Principles for Stabilization and Reconstruction* (Washington, DC: United States Institute of Peace Press, 2009), 1-3. Hereafter *Guiding Principles*.

<sup>8</sup>*Ibid.*, 2-9.

<sup>9</sup>*Ibid.*, 3-12.

<sup>10</sup>*Ibid.*

Nation-building and statebuilding are often used interchangeably.<sup>11</sup> This has led to some confusion in understanding of the terms in mass media. Though the literature offers many definitions of each, nation building generally refers to the inculcation of shared values and a common identity among inhabitants of a sovereign state.<sup>12</sup>

Statebuilding is generally described as the creation and strengthening of the civil and military institutions which comprise a government.”<sup>13</sup> The current literature concerning statebuilding can be broadly divided along the general lines: institution building, legitimacy building, peace-building. None of these categorizations are mutually exclusive as there is overlap between them. Institution building and legitimacy building are by no means mutually exclusive of each other either; rather it is a matter of emphasis. Institution building places primacy on creating or strengthening the administrative apparatuses of the state and the state’s ability to assert and maintain its authority over the society in question. Legitimacy building emphasizes strengthening the state in order to increase its capacity to command loyalty.<sup>14</sup> Peace building theory contends that peacekeeping efforts must go beyond ending violence. Peace building generally includes creating sustainable peace through statebuilding activities such as building legal and bureaucratic systems, planning elections, and provisioning security.<sup>15</sup>

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<sup>11</sup>S. C. M Paine, *Nation Building, State Building, and Economic Development: Case Studies and Comparisons* (New York: M. E. Sharpe, 2010), 7.

<sup>12</sup>Ibid.

<sup>13</sup>Ibid.

<sup>14</sup>Nicolas Lemay-Hebert, “Trying to Make Sense of the Contemporary Debate on State-Building: The Legitimacy and the Institutional Approaches on State, State Collapse and State-Building,” (presented at the PSA Annual Conference (Political Studies Association), Edinburgh: University of Birmingham, 2010), [http://www.psa.ac.uk/journals/pdf/5/2010/1790\\_1539.pdf](http://www.psa.ac.uk/journals/pdf/5/2010/1790_1539.pdf). (accessed 10 March 2014).

<sup>15</sup>Charles Call, Vanessa Wyeth, and International Peace Institute, *Building States to Build Peace* (Boulder: Lynne Rienner Publishers, 2008), 3.

## SECURITY

Security must be viewed through the lens of the population. JP 3-24 uses the term “human security” as a starting point. Human security is much more comprehensive than physical or territorial security. Human Security includes maintenance of laws, the protection of human rights, freedom to conduct economic activity and essential services.<sup>16</sup> Commanders and planners must consider what is important and not important to the HN population, not necessarily what is considered correct according to western standards. Though the S&R force must consider all facets of human security, the priorities should be set by the population. Physical security in a COIN environment more often than not tops this list.<sup>17</sup> JP 3-07 then provides the best definition of security for our purposes, which is the reduction of civil violence to a level manageable by HN law enforcement authorities or acceptable within cultural norms.<sup>18</sup> S&R doctrine reflects the best theory and understanding of practice regarding security as the most important element of S&R operations. This is demonstrated by the complementary discussions of security as necessary to enable other S&R efforts, security as necessary to legitimate governance, and security which must consider right force size and scope for legitimate purposes.

### Security in Scholarly Literature

In his seminal work on early COIN theory, David Galula’s *Counterinsurgency Warfare: Theory and Practice* Galula asserts that two tasks which are tantamount to security must be conducted first. Destruction or expulsion of the insurgent forces is the first step in

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<sup>16</sup>Chairman, Joint Chiefs of Staff, Joint Publication (JP) 3-24, *Counterinsurgency* (Washington, DC: Government Printing Office, 2013), III-6.

<sup>17</sup>Ibid.

<sup>18</sup>Chairman, Joint Chiefs of Staff, Joint Publication (JP) 3-07, *Stability Operations* (Washington, DC: Government Printing Office, 2011), III-4.

counterinsurgency operations and the second step is deployment of the static unit. Both are necessary prior to any other COIN efforts.<sup>19</sup> The aim is to ultimately gain the support or at least acquiescence of the population so that legitimate political processes may begin. Overt support is not likely during the destruction phase because there is still the potential for local civilians to face reprisals from the insurgents. Here the main effort is on tracking and eliminating insurgent forces or at least creating a physical separation between the insurgents and the population.<sup>20</sup> The purpose of the second step is to secure the population well enough to begin to win their support through the facilitation of civic processes. The COIN force should still track and reduce insurgents during this step but as a secondary effort to engaging with the population. To this end Galula advises commanders not to waste resources protecting terrain that would be considered critical in a conventional fight but rather to deploy units where the population actually lives.<sup>21</sup> He asserts that these two steps are necessary before any rudimentary economic, social, or medical projects can be implemented.

Galula also points out that once the static unit is deployed and the population feels a certain degree of confidence in them then the third step, contact with and control of the population, can begin.<sup>22</sup> Here they will start to provide intelligence to the COIN force with the potential effect to further strengthen security. In order to begin implementing political reforms however, it is necessary to destroy the insurgent's political organization. This is Galula's fourth step and is necessary to break the last durable link between the population and the insurgency.

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<sup>19</sup>David Galula, *Counterinsurgency Warfare: Theory and Practice* (New York: Praeger, 1964), 107-110.

<sup>20</sup>*Ibid.*, 109.

<sup>21</sup>*Ibid.*, 110-111.

<sup>22</sup>*Ibid.*, 115.

This removes the insurgent's eyes and ears within the HN population, reduces fear of reprisals within it, and gives them a sense that the counterinsurgency will endure.<sup>23</sup> Once this is complete then more significant S&R efforts can take place such as local elections and formation of parties may occur.<sup>24</sup> The first two steps establish security and cannot be performed in parallel with the others. This concept demonstrates that Galula understood that the concept of security is foundational to COIN. Additional non-lethal COIN efforts can only begin in the context of security and can in some cases contribute to security. Here Galula demonstrates that he sees security as interdependent with other aspects of COIN. Galula offers some questionable advice however. In situations where there is a dispersed and rural population among an insufficient COIN force to secure them all, Galula advocates forced resettlement as a last resort to separate the insurgents from the population.<sup>25</sup> This would be considered inhumane and contrary to international norms today. It also has the potential to inflame the population and further validate the insurgents cause. Galula does acknowledge that much but also cites the efficacy of this policy in Malaya, Cambodia, Algeria and by the French in Vietnam thus his theory is grounded in Marxist COIN.<sup>26</sup> His work is relevant for the COIN practitioner today as much of it is reflected in current doctrine.

*Guiding Principles* defines Security as a cross-cutting principle which is a prerequisite for peace. Absence of security is what initially necessitates the S&R intervention. As a cross-cutting principle security is defined as the physical security necessary to pursue a permanent peace and create the enabling environment for development. More specifically it is a prerequisite

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<sup>23</sup>Ibid., 123-127.

<sup>24</sup>Ibid., 127-132.

<sup>25</sup>Ibid., 111-112.

<sup>26</sup>Ibid., 111.

for the five endstates of a safe and secure environment, rule of law, stable governance, sustainable economy, and social well-being.<sup>27</sup> Security is necessary before any other S&R efforts may be successfully engaged in. The endstate of safe and secure environment is a population free to pursue day to day activities without fear of politically motivated, persistent, or large scale violence. A safe and secure environment must be established first and foremost because without one it is not possible for civilian agencies to begin setting the stage for building the rule of law, good governance, economic growth and social development.<sup>28</sup> *Guiding Principles* further goes on to point out that converse of this also applies. When positive gains are made in social, economic, and governance functions there is a beneficial effect on security by building stakeholderhood of the HN population in the peace process and providing them with a feasible alternative to violence. Thus security is interdependent with other S&R functions.<sup>29</sup>

The bulk of recent S&R literature also places the provision of security as the first priority or as one of a few first priorities. Larry Diamond describes security in a post conflict environment as “not simply one leg of a table; it is the central pedestal that bears the bulk of the table’s weight.”<sup>30</sup> The literature also generally recognizes security as interdependent with other facets of S&R. Without security the other foundations of political reconstruction of a legitimate, capable, and rule based state economic and physical reconstruction will stagnate and investors will not have the confidence to take risks necessary to provide employment and wealth generation. Without economic progress the government cannot develop and sustain legitimacy as the

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<sup>27</sup>*Guiding Principles*, 2-8, 3-12, 3-20.

<sup>28</sup>*Ibid.*, 6-38.

<sup>29</sup>*Ibid.*, 6-40.

<sup>30</sup>Larry Diamond, “What Went Wrong and Right in Iraq,” in *Nation Building: Beyond Afghanistan and Iraq*, ed. Francis Fukuyama (Baltimore: The Johns Hopkins University Press, 2006), 176.

population has no stake in the process. Security also enables the development of social capital in the form of horizontal bonds of trust, political culture, and voluntary cooperation to both support and scrutinize the fledgling government.<sup>31</sup> Security is also enabling of and interdependent with the core functions of governance such as generating revenue through taxation and the administration of justice. Security provision both enables and shapes political processes and is shaped by them in potential spirals of political and security reforms or regressions. It is thus interdependent with overall legitimacy.<sup>32</sup> Security is the critical and foundational tenet of S&R operations. This should not be taken as carte blanche by the S&R force however to establish security in a blunt and thoughtless manner.

The literature suggests determining the correct size and scope of the S&R force. Two concepts outlined in assessing correct size and scope are executed through the complimentary concepts of the duration dilemma and the footprint dilemma. The duration dilemma refers to the tendency of an S&R entity to “wear out its welcome” over time.<sup>33</sup> Although the force may be initially welcomed, the longer they stay, the more likely resistance is to grow thus making it more difficult to provide security and establish systems conducive to long-term, sustainable stability. However, if the forces leave too soon before security and stability are reasonably certain, then the conflict is much more likely to resume.<sup>34</sup> The footprint dilemma revolves around both the size of the S&R force, its intrusiveness into the domestic matters of the state in question as well as the

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<sup>31</sup>Ibid.

<sup>32</sup>Call and Wyeth, 382.

<sup>33</sup>David Edelstein, “Foreign Militaries, Sustainable Institutions, and Postwar Statebuilding,” in *The Dilemmas of Statebuilding*, ed. Roland Paris and Timothy D. Sisk (New York: Routledge, 2009), 84.

<sup>34</sup>Ibid.

relative aggressiveness of the ROE.<sup>35</sup> Similar to the duration dilemma, if the footprint is too light then the S&R force may not be able to adequately secure the population and thus not be able to conduct any meaningful S&R. However if the footprint is too large then they run the risk of being seen as occupiers and fomenting resistance. If the ROE are too permissive then the S&R force runs the risk of causing civilian casualties and inflaming and alienating the population. If they are too restrictive then there is the potential to not adequately secure the population and not create separation between them and any spoilers such as an insurgency. This can result in lack of confidence in and a decrease of perceived legitimacy of the S&R force and the HN government.<sup>36</sup>

Examples from the literature illustrate these concepts. Afghanistan presents an example of the footprint dilemma and how both adequate security can underpin S&R efforts and the lack thereof leads to ineffectual governance and lost legitimacy. After initially toppling the Taliban, the Bush administration was generally adverse to the idea of “nation building” in Afghanistan. Specifically, Secretary of Defense Donald Rumsfeld and CENTCOM Commander GEN Tommy Franks were adamant that no peacekeeping force should be present outside of Kabul and certainly not one consisting of US forces.<sup>37</sup> The US and its NATO allies ultimately agreed to 22,000 US troops to secure Kabul and fight what remained of the Taliban in the southern provinces along with 20,000 additional NATO troops in the rest of the country.<sup>38</sup> This force structure was adequate to provide security and the coalition along with the Afghan Government made some

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<sup>35</sup>Ibid., 90.

<sup>36</sup>Ibid., 92.

<sup>37</sup>Seth G Jones, *In the Graveyard of Empires: America's War in Afghanistan* (New York: W. W. Norton and Co., 2009), 112.

<sup>38</sup>Edelstein, 92.

significant progress from 2002 to 2004.<sup>39</sup> In this secure environment, the Government of the Islamic Republic of Afghanistan (GIROA) established a stable currency, began building a nationwide cellular network with foreign help, and drastically expanded access to education and healthcare. Additionally the United States with the help of international partners began rebuilding the ring road to enable travel and commerce.<sup>40</sup> However, during this placid period the Taliban were regrouping and re-arming in the Federally Administered Tribal Areas (FATA) of Pakistan where US and ISAF forces were unwilling to strike at that time. A decisive event occurred in October of 2004 when three UN staff members were abducted in Kabul. This event marked the beginning of a downward slide in Afghan security.<sup>41</sup> The “light footprint” strategy as it turns out was insufficient to build local security capacity and institutions. This shortcoming caused Afghans to lose confidence in their fledgling government’s ability to protect them. By 2008, Afghan confidence in the United States and its ISAF partners was half of what it was in 2005.<sup>42</sup> The Afghan populace’s perception of the Taliban was also one of relative strengthening along this same interval as well.<sup>43</sup> Though the Afghans generally despised the Taliban, the deteriorating security environment provided no incentive for them to openly back the Americans or the GIROA.<sup>44</sup> Amid this environment of insecurity, building functional government institutions to provide essential services and create a perception of legitimacy was difficult if not impossible.

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<sup>39</sup>Joseph J Collins, *Understanding War in Afghanistan* (Washington, DC: National Defense University Press, 2011), 64.

<sup>40</sup>*Ibid.*, 64-66.

<sup>41</sup>Jones, 148.

<sup>42</sup>*Ibid.*, 80.

<sup>43</sup>*Ibid.*

<sup>44</sup>*Ibid.*, 77.

### Security in Doctrine

JP 3-24, *Counterinsurgency*, JP 3-07, *Stability Operations*, JP 3-07.3, *Peace Operations*, FM 3-24, *Counterinsurgency*, and ADP 3-05, *Special Operations* comprise the foundational joint doctrine on S&R operations. Stability operations and COIN are complementary doctrines. Stability operations are fundamental to COIN as they address the root causes of the insurgency and are thus critical to long term success.<sup>45</sup> Stated another way stability operations are the “build” phase of the COIN “clear, hold, build” process.<sup>46</sup> Security therefore falls mostly under the rubric of COIN. All three manuals discuss security to some degree however. JP 3-24 states up front in that security is the most important concern from the perspective of the population. The population centric nature of COIN makes security the foundation for all other S&R efforts and a prerequisite for enduring stability.<sup>47</sup> However the contention that all COIN operations are population-centric is controversial and may be an area where current COIN doctrine falls short. Critics of population-centric COIN argue that this approach is not optimal for every situation.<sup>48</sup>

Current COIN doctrine explains that insurgent violence against the HN population undermines the HN government and COIN force’s credibility and legitimacy, isolates the population from the government through fear and intimidation, and can comprise a competing system of governance over the population. If the parallel insurgent system is more credible and its rules are more consistently and ruthlessly enforced, the population will tend to support it over the government system regardless of which system more closely aligns with their personal

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<sup>45</sup>JP 3-24, V-11.

<sup>46</sup>JP 3-07, I-6.

<sup>47</sup>JP 3-24, III-11.

<sup>48</sup>Dan G. Cox and Thomas Bruscino, *Population-Centric Counterinsurgency: A False Idol?* (Fort Leavenworth, KS: Combat Studies Institute, 2011), 1-8.

ideology.<sup>49</sup> JP 3-24 also addresses the right-sizing of the COIN force. JP 3-24 discusses the tradeoffs associated with small and large footprint approaches. A small footprint approach will provide the COIN force with limited access to the HN population. This has the potential to enable the HN government to overstate the extremism of the insurgents and resist necessary reforms by preventing the COIN force from hearing credible voices of dissent. If the COIN force is seen as enabling a corrupt government then the COIN force strengthens the insurgents' narrative. The small footprint approach also provides limited opportunities for oversight and mentoring over the HN government and limited combat capability and influence over HN security forces are also drawbacks.<sup>50</sup>

JP 3-24 discusses a large footprint approach in terms of an occupation where there is no functioning government or a regime change under the auspices of a UN Security Council resolution. In such an instance the law of war requires the occupying force to secure the local population and enforce local laws to the extent that they conform with international human rights norms. This is so regardless of where the population interprets the occupation as sitting along the scale of liberation to invasion.<sup>51</sup> This has the potential to exacerbate some of the challenges of the large footprint approach such as usurpation of sovereignty. A large footprint approach increases contact with the HN population and leads to an increased risk of civilian casualties. Increased civilian casualties can obviously diminish their patience and support. When this reaches a critical point the population will view the COIN force as occupiers and as a result view the HN government as subservient, not sovereign, and illegitimate.<sup>52</sup> This can feed another drawback of a

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<sup>49</sup>JP 3-24, III-12.

<sup>50</sup>Ibid., III-20.

<sup>51</sup>Ibid., III-21.

<sup>52</sup>Ibid.

large footprint approach which is enhancement of the insurgent narrative. A large foreign force which overstays its welcome can provide the insurgency with propaganda value to bolster a narrative illegitimate occupation, neo-colonialism, and conspiracy theories. Finally, another drawback of a large footprint approach is that a large foreign force may hinder the development of the HN security forces by assuming too much responsibility. They can also frustrate these efforts by expecting them to train to western standards and by providing salaries that are unsustainable and weapons and equipment that are unnecessarily sophisticated for the local context.<sup>53</sup>

JP 3-24 also discusses the necessity to assume the appropriate posture in terms of ROE and aggressiveness. Population security may require aggressive and proactive offensive operations against insurgents in order to gain and maintain the initiative while reducing the threat. In some contexts HN populations have tolerated accidental civilian casualties when the result has been an overall improvement in security.<sup>54</sup> In such a context operating under a more passive approach has the potential to harm the COIN force and HN government legitimacy by not keeping the population safe and separate from the insurgents. In other contexts this aggressive posture may in fact alienate the population and undermine support for the HN government. COIN forces should carefully evaluate the political, cultural, and security contexts from the lens of the HN population in order to determine where the fine line dividing each side of this dilemma resides. The doctrine also recommends tailoring ROE to minimize civilian casualties while still maintaining the ability to protect the population and the force.<sup>55</sup> The challenge is to use the right amount of force precisely and discriminately in order to strengthen security and the rule of law

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<sup>53</sup>Ibid.

<sup>54</sup>Ibid., III-13.

<sup>55</sup>Ibid.

without using too much force. Going too far in this direction will increase the potential for civilian casualties and fuel insurgent propaganda with a greater means to resonate within the population. Insurgents will often stage an attack in order to illicit a violent and disproportionate response from the COIN force with the purpose of framing this response as a unilateral act of brutality. However not going far enough risks the legitimacy of the HN and COIN force. Sometimes the best reaction is to do nothing. At other times it is to strike with precision and the right amount of force.<sup>56</sup>

ADP 3-05 provides the most comprehensive thought on a light footprint approach found in current doctrine. Special operations critical capabilities of special warfare and surgical strike are explicitly predicated on a light footprint. The two broad categories of unconventional warfare and foreign internal defense are subordinate to special warfare. Both categories involve almost exclusively enabling a friendly force rather than direct action on the part of US forces. Unconventional warfare involves enabling an insurgency or other guerilla movement to overthrow a government or defeat an occupying power. These operations are necessarily politically sensitive and risky and require deliberate planning with a minimal force structure.<sup>57</sup> Foreign internal defense (FID) provides assistance to other governments in defeating terrorism, an insurgency, or other subversive actors. Here the focus is on influencing and enabling indigenous actors rather than direct action against an adversary.<sup>58</sup> A light footprint is also implicit in the name of the other special operations critical capability of surgical strike. Surgical strike operations are carried out precisely and discriminately against critical operational or strategic

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<sup>56</sup>Department of the Army, Field Manual (FM) 3-24, *Counterinsurgency* (Washington, DC: Government Printing Office, 2006), 1-27.

<sup>57</sup>Department of the Army, Army Doctrine Publication (ADP) 3-05, *Special Operations* (Washington, DC: Government Printing Office, 2012), 9.

<sup>58</sup>*Ibid.*

targets as they relate to counterproliferation, counterterrorism, and hostage rescue and recovery.<sup>59</sup> The special operations core principles of discreet, precise, and scalable operations also describe an approach of minimal necessary force structure and aggressiveness. Discretion refers exactly to this reduction in the signature of US presence or assistance. Precision is designed to eliminate collateral damage by use of intelligence to target only those individuals and systems which enable the achievement of strategic objectives. Scalability suggests the potential to adjust to the environment. Scalability refers to how special operations forces are organized, trained, and equipped to conduct operations unilaterally with minimal conventional support or they can account as part of a large-scale conventional operation toward desired future operational and strategic conditions.<sup>60</sup>

JP 3-07 and JP 3-07.3 both identify security as foundational to enabling longer term S&R processes.<sup>61</sup> JP 3-07 plainly states that the actual provision of security is not a stability operation per se.<sup>62</sup> JP 3-07 defines stability operations as the “build” phase in the context of COIN, it assumes that either the insurgency has been largely defeated or that no insurgency existed prior to the stability operation.<sup>63</sup> Its discussion of security focuses more on HN Security Sector Reform (SSR) and Disarmament, Demobilization, and Reintegration (DDR) of previous belligerents.<sup>64</sup> JP 3-07.3 frames security in terms of peacekeeping and peace enforcement operations. These are

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<sup>59</sup>Ibid., 9-10.

<sup>60</sup>Ibid., 10-11.

<sup>61</sup>Department of Defense, Joint Publication (JP) 3-07.3, *Peace Operations* (Washington, DC: Government Printing Office, 2012), IV-3; JP 3-07, III-4.

<sup>62</sup>JP 3-07, III-4.

<sup>63</sup>Ibid., I-6.

<sup>64</sup>Ibid., I-5-9.

operations which aim to separate warring parties either by invitation of the belligerents or through UN resolution without their consent.<sup>65</sup> Though insurgency may be present in the latter instance necessitating a COIN prior to or in parallel with the peace enforcement operation, JP 3-07.3 limits its discussion of security more toward post conflict concerns such maintaining separation of belligerent forces, guarding key infrastructure, and disarmament, demobilization, and reintegration.<sup>66</sup>

### Comparison of Security in Literature and Doctrine

All three principle S&R doctrinal publications discuss security as foundational to other S&R lines of effort and as a prerequisite to enduring stability. The literature almost universally echoes this assertion. Galula prescribes the first two steps of COIN as destruction or expulsion of the insurgent forces and deployment of a static unit to population centers in order to further isolate the insurgency from the population. These steps must occur prior to any political, economic, or social reform can take root.<sup>67</sup> Galula's work is often cited as favoring population-centric COIN which indeed it does. Galula does however identify some conditions where a more lethal approach has the potential to quickly defeat an insurgency. Galula describes two fundamental patterns of an insurgency: orthodox and shortcut. The orthodox pattern has five steps: Creation of a party, united front, guerilla warfare, movement warfare, and annihilation campaign. The shortcut pattern replaces the first two steps with blind terrorism and selective terrorism. Once these steps are complete the shortcut pattern converges back in to the orthodox.<sup>68</sup>

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<sup>65</sup>JP 3-07.3, II-1, III-1.

<sup>66</sup>Ibid., IV-3.

<sup>67</sup>Galula, 107-111.

<sup>68</sup>Ibid., 43-59.

In the orthodox pattern, an insurgency is vulnerable to varying degrees during the first four steps. During the first two, the insurgencies' vulnerability is dependent upon the HN government or COIN forces tolerance of political dissent. This is so because the insurgent at this stage has neither significant political unity nor credible military power. The COIN force can defeat the insurgency in its embryonic stage at this point by conducting swift and decisive offensive operations.<sup>69</sup> This is more likely to occur in a totalitarian than in a liberal democracy as the latter is necessarily more tolerant of political dissent. Should this be the case and the insurgency manages to create a party with a united front, then the insurgency is still vulnerable during the third step because they still have no significant military capability. Here the insurgency may also be crushed by a concerted, lethal effort on the part of the COIN force. The insurgency is most vulnerable however during the transition from guerilla warfare to movement warfare. At this stage the insurgent steps out of the shadows and exposes himself in the guise of a more conventional force thus losing the stealth and agility of a guerilla force.<sup>70</sup> An insurgency is also vulnerable during the first two phases of the shortcut pattern. This is because by engaging in conspicuous terrorism up front, the insurgency exposes itself as a target for the COIN force prior to establishing a political base. The COIN force will also necessarily respond much sooner. If this response is well planned and sufficiently lethal then it has the potential to preemptively destroy the insurgency before it can take root.<sup>71</sup>

Population-centric COIN's detractors argue that it represents a prescriptive and rigid set of tactics which essentially become the strategy thus precluding strategic thought and operational

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<sup>69</sup>Ibid., 60.

<sup>70</sup>Ibid., 60-61.

<sup>71</sup>Ibid., 62.

art.<sup>72</sup> Population-centric COIN has become to be enshrined as gospel based broadly on the United States' failure in Vietnam and the perceived success of the surge in Iraq. Critics also note that early population-centric theorists such as Galula derived their work based on lessons learned from successful efforts by the British in Malaya and the French in Algeria in the 1950s. Authors of current COIN doctrine have taken these lessons out of context and have ignored the more aggressive tactics which contributed to their favorable outcomes as well.<sup>73</sup> Population-centric COIN tactics necessitate a large footprint approach and are tantamount to state building.<sup>74</sup> This contention is supported by JP 3-07 which defines stability operations as the "build" phase of COIN as previously mentioned.<sup>75</sup> The end result is that the tactics essentially become the strategy which precludes strategic thought and operational art. Cox and Bruscino frame warfare in general and COIN in particular as a social science endeavor<sup>76</sup> and argue that population-centric COIN was not subject to evidence based inquiry prior to being codified as the way to approach any type of insurgency.<sup>77</sup> As a counterpoint Bard O'Neill has studied every major insurgency in world history and has categorized them in to nine discreet types. He further concludes that each of these types requires its own unique COIN strategy.<sup>78</sup> Even such foundational population-centric COIN

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<sup>72</sup>Gian P. Gentile, "A Strategy of Tactics: Population-Centric COIN and the Army," *Parameters* (2011): 117-118.

<sup>73</sup>*Ibid.*, 121.

<sup>74</sup>Gentile, 117-120; Cox and Bruscino, 1-2.

<sup>75</sup>JP 3-07, I-6.

<sup>76</sup>Cox and Bruscino, 3.

<sup>77</sup>*Ibid.*

<sup>78</sup>Bard E O'Neill, *Insurgency & Terrorism: From Revolution to Apocalypse* (Washington, DC: Potomac Books, 2005), 20-29.

theorists such as Galula point out that violence can be used to defeat an insurgency in certain vulnerable phases and transitions.<sup>79</sup>

More recent S&R literature makes the case for security first and foremost. *Guiding Principles* goes so far as to assert that the absence of security is what necessitates an S&R operation in the first place. It defines security as a cross-cutting principle necessary to be considered by all stakeholders and necessary to achieve before undertaking other S&R efforts.<sup>80</sup> The endstate of a safe and secure environment is fundamental to the other four endstates discussed in *Guiding Principles* because it is not possible to build rule of law, governance, economic growth, and social development absent one.<sup>81</sup> *Guiding Principles* and other literature are consistent with doctrine in terms of defining security as foundational to S&R operations. The literature takes it a step further however in discussing the complementary and interdependent nature of security and the other S&R functions. When social and economic conditions improve in an environment of security and good governance the HN population has an increased stake in the system and providing them with a path to prosperity and less incentive to engage in violence.<sup>82</sup> Security creates space for governance to function and expand in scope toward legitimate functions of tax revenue and rule of law. Reforms in these areas combined with other political processes further shape reforms and improvements in terms of security.<sup>83</sup> The doctrine generally reflects the literature in terms of the criticality of security for long term stability and security is necessary prior to achieving other S&R efforts. Doctrine lacks some of the depth and nuance in

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<sup>79</sup>Galula, 60-62.

<sup>80</sup>*Guiding Principles*, 3-12.

<sup>81</sup>*Ibid.*, 6-38.

<sup>82</sup>*Ibid.*, 6-40.

<sup>83</sup>Call and Wyeth, 382.

terms of the interdependent relationships described in the literature however. Much of this lost depth is attributable to the almost exclusive focus on population-centric COIN. As demonstrated previously the doctrinal discussion of security is from an exclusively population centric perspective. This is certainly important when attempting to provision security against a mature and organized insurgency. A discussion on the potential to crush an insurgency using lethal operations during its embryonic phase would add to the value of doctrine. This could provide to commanders a tool with which to secure the population, obviate the need for further COIN efforts, and enable stability operations to begin forthwith.

Doctrine also cites security as a source of legitimacy. JP 3-24 explains that civilians tend to cooperate with whatever force or entity provides the most predictable and tolerable environment. This is defined as a clear set of rules consistently enforced under which the population feels it can reasonable exist.<sup>84</sup> Lack of security undermines the HN government's credibility and legitimacy. This vacuum can provide opportunity for an insurgent group or other competing entity to establish a parallel system of control over the population. If this system is more efficient and consistent than the government one then it will be seen as more legitimate.<sup>85</sup> The literature discusses security as a driver of legitimacy through examples. Initial legitimacy for the UN mission in Afghanistan was high. As previously discussed the international effort and the Afghan government accomplished much in terms of building the economy and infrastructure through 2004.<sup>86</sup> Once the Taliban became more aggressive regardless of the force structure in place, security forces were inadequate to counter the threat and secure the rural population. By 2008 confidence in the US and GIROA were half of what they were in 2003 leading Afghans to

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<sup>84</sup>JP 3-24, III-11.

<sup>85</sup>Ibid., III-12.

<sup>86</sup>Collins, 64-66.

increasingly hedge in terms of being seen as supporting the GIROA and US or the Taliban.<sup>87</sup> In summary, doctrine is generally consistent with literature in terms of security as necessary for legitimacy.

The S&R doctrine discusses the need to consider the appropriate size and scope of the force. Too small of a force can limit productive engagements with the HN population, limits combat capability and reduces opportunities to provide oversight and mentorship of the HN government, and provides limited combat capability and influence over the HN security forces.<sup>88</sup> JP 3-24 uses the discussion of the large footprint approach to remind the commander or planner that the provision of security by the occupying force is a requirement under the law of war during an occupation of an ungoverned area or after a UN mandated regime change.<sup>89</sup> This discussion assumes that fulfilling this requirement will require a large footprint. This approach has potential drawbacks of usurpation of sovereignty, strengthening the insurgent narrative, and stunting the development of the HN security forces. JP 3-24 also counsels the COIN force to carefully calibrate the level of aggressiveness and the correct ROE. The calibration of COIN forces are necessary in order to provide the appropriate level of population security and maintain legitimacy while not being too aggressive and causing civilian casualties. This requires a detailed understanding of the local context.<sup>90</sup>

JP 3-07 expands the discussion of attaining the right size and scope of the S&R force with suggestions on tailored approaches and security force organization. Tailored approaches are targeted and differentiated to engage various actors and agents within the conflict. Some

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<sup>87</sup>Ibid., 79-80.

<sup>88</sup>JP 3-24, III-20.

<sup>89</sup>Ibid., III-21.

<sup>90</sup>Ibid., III-13.

examples include supporting and empowering friendly groups by crediting them with changes in force posture, providing incentives or compelling adversaries to reconcile, or marginalizing those that are irreconcilable.<sup>91</sup> Security force organization refers to the organization of the force in composite units for the purpose establishing population security. An example of such is a framework force which are large, comprehensive forces with their own operational areas.<sup>92</sup> Other examples are strike forces used against high value targets, surge forces deployed to reinforce framework forces, specific focus task forces such as those used to defeat an IED network, the use of local militias and cadres as short-term relief to free up other resources.<sup>93</sup> The literature discusses balancing force size and scope through the paradigm of the footprint and duration dilemmas. If an S&R force leaves too soon before durable stability is achieved, then the chance of conflict resuming is higher. If on the other hand the S&R forces remain longer to make sure that conflict does not resume and that S&R forces solidify enduring gains, then the resistance of the population is likely to rise over time. A solution offered is to make tangible and visible steps to return sovereignty to the HN government or population in order to create the perception of progress.<sup>94</sup>

The footprint dilemma is similar to the discussion in JP 3-24 of the large and small footprint approaches. It also includes advice on striking the right balance in terms of aggressiveness.<sup>95</sup> The doctrine generally captures best theory and understanding of practice in terms of achieving the right size and scope of the S&R force. The literature includes discussion of

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<sup>91</sup>JP 3-07, III-16

<sup>92</sup>Ibid.

<sup>93</sup>Ibid., III-17.

<sup>94</sup>Edelstein, 84.

<sup>95</sup>Ibid., 90.

the duration dilemma while JP 3-24 only discusses size and scope in terms of footprint, aggressiveness, and ROE. JP 3-07 does include more detailed advice on force structuring and tailoring of approaches however.

## RULE OF LAW

Rule of law must also be considered in cultural context. Though a society may be enduring a transitory period of lawlessness, this does not imply that lawlessness is endemic in their culture. Such is the case of Iraq. While today the country is still plagued with sectarian violence, modern day Iraq has a history of legal scholarship dating back to ancient Babylon and the Code of Hammurabi. This is the earliest known codified body of law.<sup>96</sup> We will demonstrate this in the literature and its discussion of customary law. S&R doctrine adequately captures best theory and understanding of practice pertaining to the rule of law. S&R literature and doctrine demonstrate this through the discussions of rule of law as a monopoly on the legitimate use of force, consideration of cultural context, and as providing certainty and predictability to the HN population.

### Rule of Law in Scholarly Literature

One of the best discussions of the development of the American legal system vs. that of Europe can be found in Samuel P. Huntington's more enduring and seminal early discussions on statebuilding, *Political Order in Changing Societies*. Huntington argues that the strength and legitimacy of government, not necessarily democracy, should be the goal of societies undergoing social turmoil.<sup>97</sup> His thesis is that this turmoil results from rapid social change, such as mass

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<sup>96</sup>Charles F. Horne, "The Code of Hammurabi: Introduction," Yale University Law School, 1915, [http://avalon.law.yale.edu/subject\\_menus/hammenu.asp](http://avalon.law.yale.edu/subject_menus/hammenu.asp) ( accessed 4 May 2014).

<sup>97</sup>Samuel P. Huntington, *Political Order in Changing Societies* (New Haven, CT: Yale University Press, 1996), 1-4.

urbanization, increases in education, rapid industrialization, and access to media which brings about greater political participation. These sudden changes undermine traditional institutions which cannot adapt fast enough to keep up with the social and economic change.<sup>98</sup> The United States has failed to grasp this sequence because of our unique historical circumstances. The US has enjoyed the good fortune of economic plenty, social well-being, and a stable government. This happy convergence has led Americans to believe that good things are mutually reinforcing of one another and that the achievement of a noble goal should aid in the achievement of another according to Huntington.<sup>99</sup> As such US foreign policy during the 1950s was predicated on the achievement of economic development which would lead to social reform and ultimately political stability.

Huntington contends that economic development and political stability are separate goals with no explicit causal relationship between the two.<sup>100</sup> Huntington also argues that US foreign policy was flawed in seeking to encourage the limitation of authority and distribution of power rather than the creation of authority and accumulation of power.<sup>101</sup> The goal should not be first to hold elections but first to create systems and an organizational structure. Elections without structure are meaningless according to Huntington. Huntington also attributes this to America's fortunate history of having been born a democracy rather than evolving in to one.<sup>102</sup> He further explains that Britain underwent a transformation in the 17th century where the state asserted

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<sup>98</sup>Ibid., 5.

<sup>99</sup>Ibid.

<sup>100</sup>Ibid., 6.

<sup>101</sup>Ibid., 7.

<sup>102</sup>Ibid.

sovereignty over feudal principality, bureaucracies created and expanded, a standing army was formed, and power was centralized in parliament.<sup>103</sup>

During this time fundamental law was also replaced with modern law. Fundamental law sees law as unchanging and almost a state of nature. It is both a source of authority for human action and a restraint on human behavior.<sup>104</sup> This manner of thinking is well demonstrated in the quote, “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness.”<sup>105</sup> Modern law replaces acceptance of law as something external and static with the idea that man has the capacity of man to change his political and social environments for the better through reasoned action.<sup>106</sup>

Political institutions in the new world did not undergo this revolutionary change. The structure and elements of the English 16th century constitution were exported to America and thrived at the same time that they were being abandoned in England and the Continent.<sup>107</sup> These principles were essentially Tudor and thus to a large degree medieval. Huntington argues that the events leading up to the American Revolution centered on tension between what was essentially the old English constitution in the Colonies and the new one.<sup>108</sup> This discussion is important because it highlights a singular difference between law as understood and practiced in the United States and that in Europe many former colonies. It is also useful in reminding us to thoroughly

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<sup>103</sup>Ibid., 94-96.

<sup>104</sup>Ibid., 98.

<sup>105</sup>Declaration of Independence, US (1776).

<sup>106</sup>Huntington, 99.

<sup>107</sup>Ibid., 96.

<sup>108</sup>Ibid., 97.

consider the political and historical context of the HN as well as our own biases when planning for S&R operations.

S&R literature broadly contends that rule of law backed by a state monopoly on the legitimate use of violence is necessary to protect basic human rights and to prevent such human rights violations as arbitrary arrests, torture, and extrajudicial executions. Other Western centric rights such as freedom of expression and freedom of conscience require laws and a capable legal apparatus to sustain them.<sup>109</sup> Credible rule of law based dispute resolution systems to help ensure resolutions are fair, competent, efficient, and transparent. Rule of law helps the HN government maintain such a monopoly.<sup>110</sup> In this regard rule of law is interdependent with security. Without this monopoly individuals are more likely to take the law into their own hands and resolve disputes using violence and abuse.<sup>111</sup> Also without this monopoly other actors and potential spoilers will attempt to fill this void to some degree and to potentially collect revenue due to the state.<sup>112</sup> Much like security, the local population will regard as legitimate the most effective, efficient, and consistent provider.

The literature demonstrates this point by using the example of Taliban run Shari'a courts in Afghanistan. Across southern Afghanistan, roughly fifteen Shari'a courts operate to handle local legal matters. Though Shari'a law implies harsh and inhumane punishments for matters which are trivial at best by western standards, and this is certainly still the case in Afghanistan,

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<sup>109</sup>Jane E Stromseth, David Wippman, and Rosa Brooks, *Can Might Make Rights?* (Cambridge: Cambridge University Press, 2006), 59.

<sup>110</sup>Thomas Carothers, "The Rule of Law Revival," *Foreign Affairs* 77, no. 2 (April 1998): 2.

<sup>111</sup>*Ibid.*

<sup>112</sup>Ashraf Ghani and Clare Lockhart, *Fixing Failed States* (New York: Oxford University Press, 2009), 130.

the majority of the cases are commercial or civil rather than criminal.<sup>113</sup> These courts issue title deeds to land and resolve land disputes, littoral and grazing disputes, handle family law, issue identity cards and passports.<sup>114</sup> The Taliban have also implemented an ombudsman system where people can redress grievances with local Taliban commanders by whom they feel they have been wronged. The complaint will be heard by a putatively neutral third party and if substantiated the Taliban commander will be punished and the aggrieved party compensated.<sup>115</sup> Furthermore, the Taliban has a code of conduct known as the Ayeha, which prescribes a set of rules of behavior, admonitions to treat the population fairly, and instructs how Taliban groups are to operate. This code is well known to the Afghan people and it, along with the Taliban courts and ombudsman systems, provides a degree of accountability for the Taliban rank and file.<sup>116</sup> According to David Kilcullen, the Taliban are using this aspect of the system as part of an information operations strategy to essentially say, “The government will exploit you and abuse you, and their allies, the coalition forces, will bomb you, and there's really nothing you can do about it. We Taliban might be harsh, but we are from here, we are part of your society, we're not going anywhere, and we are fair, predictable and just.”<sup>117</sup> The Taliban rather than the GIROA are framing the narrative. This is not to say that the Taliban are not vicious and brutal nor that we should emulate them. It does demonstrate that the Taliban have found a way to enact a parallel functioning shadow legal system from the grassroots which is self-sustaining. The GIROA in contrast, collects little in

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<sup>113</sup>David J. Kilcullen, “Deiokes and the Taliban: Local Governance, Bottom-Up State Formation and the Rule of Law in Counter-Insurgency,” in *The Rule of Law in Afghanistan* (New York: Cambridge University Press, 2011), 45.

<sup>114</sup>Ibid.

<sup>115</sup>Ibid., 46.

<sup>116</sup>Ibid., 47.

<sup>117</sup>Ibid., 46.

taxes, relies on corruption and shakedowns, has no comprehensive local court system, lacks a local presence in roughly two thirds of the country and where it is present is widely corrupt and overbearing, thus alienating the population.<sup>118</sup> This examples also partially serves to demonstrate cultural and local context as a critical consideration for the S&R force.

S&R literature urges using the local context to determine how and to what extent local or customary law and practices should be folded in to the formal legal system. The compatibility of these practices with international law and norms must be considered and to the degree allowed by this they should be integrated into the system.<sup>119</sup> In helping a state re-establish a legal system it is also important to consider which matters should be handled by the bureaucracy and which are truly judicial in terms of the local and cultural context. For instance, some countries have adopted a no fault divorce law which is handled completely outside of the judiciary and simply involves completion of a form by the aggrieved parties. In an S&R context there may well be a shortage of qualified judicial professionals or cultural norm which precludes formal adjudication. As such it is critical not to overburden the judiciary with trifling claims that can be handled in the bureaucratic realm.<sup>120</sup> Legal coercion is also expensive and can run counter to cultural norms and conventions. This argues against a “one size fits all” approach.<sup>121</sup>

The balance that a legal system must strike is between providing certainty and predictability through consistent and binding interpretations of existing law while providing enough flexibility through systems for peaceful change and reasonable adaptation to changing

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<sup>118</sup>Ibid.

<sup>119</sup>*Guiding Principles*, 7-89.

<sup>120</sup>Call and Wyeth,125.

<sup>121</sup>Ibid.

circumstances.<sup>122</sup> When rule of law is present and respected it first has the effect of stabilizing government and holding it accountable. It then sets a predictable legal environment where individuals and business may make long term plans without fear of sudden and inexplicable changes or arbitrary and capricious confiscation of wealth. It also engenders confidence in the public that changes to the law will take place when necessary but within a framework of continuity. Finally it empowers individuals to form associations, create companies and conduct commerce within the broad confines of the state.<sup>123</sup> The literature also discusses certainty and predictability in terms of enabling broad economic growth and foreign direct investment as the sanctity of private property and enforcement of contracts are central to the modern free market model.<sup>124</sup>

#### Rule of Law in Doctrine

JP 3-07 asserts that the rule of law is fundamental to legitimate governance and that perceived disparities in the law's application and real and apparent injustices are drivers of instability.<sup>125</sup> The stability operations doctrine generally describes the establishment of the rule of law as helping to ensure the state has a legitimate monopoly on the use of force, that individuals are secure in their persons and property, that the state is bound by law and does not act arbitrarily, that the law can be easily understood and is stable enough to allow individuals to make long-term plans, that individuals have access to an effective and impartial judiciary, that the state protects human rights, and finally that individuals understand and perceive their judicial institutions as

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<sup>122</sup>Ghani and Lockhart, 126.

<sup>123</sup>Ibid.

<sup>124</sup>Stromseth et al., 58.

<sup>125</sup>JP 3-07, III-41.

legitimate.<sup>126</sup> JP 3-07 defines traditional, customary, and informal justice as the broad range of methods in which an HN locality or organization may practice nonviolent dispute resolution. It underscores their importance in maintaining social order and their general historical inertia and popular acceptance.<sup>127</sup> These systems often work in parallel and sometimes compete with the formal justice system which may be broken or corrupt. These systems should not be as a default and easy solution for a dysfunctional or nonexistent justice system. They can contribute by providing an orderly means for dispute resolution and reconciliation of belligerents so long as they are consistent with international law and human rights standards.<sup>128</sup> JP 3-07 also discusses SSR in terms of ensuring that they are transparent, accountable to civilian authority, and responsive to the needs of the public.<sup>129</sup> Rule of law in the context of COIN receives much less emphasis as it falls squarely in the “build” phase and is thus covered in detail in JP 3-07 as discussed. JP 3-24 briefly discusses rule of law in terms of the requirement to ensure that the HN population has access to consistent and nonviolent means of dispute resolution. The COIN force should also be governed by and behave within the rule of law to demonstrate the credibility of the HN government and its allies and to counter the insurgent narrative.<sup>130</sup> JP 3-24 also advises commanders to support local and customary systems so long as they are consistent with human rights standards.<sup>131</sup>

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<sup>126</sup>Ibid.

<sup>127</sup>Ibid., 42.

<sup>128</sup>Ibid.

<sup>129</sup>Ibid., 43.

<sup>130</sup>JP 3-24, III-13.

<sup>131</sup>Ibid.

### Comparison of Rule of Law in Literature and Doctrine

JP 3-07 declares that rule of law should ensure that the state gains and maintains a monopoly on the legitimate use of force.<sup>132</sup> The literature supports and expounds upon this by describing this monopoly as preventative of vigilante justice and violent conflict resolution.<sup>133</sup> An effective and impartial dispute resolution mechanism will aid in maintaining the monopoly on the legitimate use of force as this fosters legitimacy viewed through the lens of the HN population.<sup>134</sup> The literature also points out that the state or S&R force's failure to maintain this monopoly creates space for parallel and competing systems administered by insurgents or other malevolent actors who divert resources away from the state via these systems.<sup>135</sup> This is demonstrated by the ubiquity of the Taliban Shari'a court system in Afghanistan. This highly successful and legitimate apparatus collects taxes, issues deeds to property, and is seen as fair and consistent in contrast to the formal Afghan system which is widely viewed as corrupt.<sup>136</sup> This system also demonstrates the importance of considering local and cultural context when conducting S&R operations.

JP 3-07 and JP 3-24 both highlight that commanders should consider cultural and local context as it pertains to the rule of law. JP 3-07 describes traditional, customary, and informal systems as those used to resolve disputes locally and not necessarily in conjunction with the formal system. These systems typically have a historical basis and a high degree of legitimacy as perceived by the local population.<sup>137</sup> As in the case of the Taliban Shari'a courts they can

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<sup>132</sup>JP 3-07, III-41.

<sup>133</sup>Stromseth et al., 59.

<sup>134</sup>Carothers, 2.

<sup>135</sup>Ghani and Lockhart, 130.

<sup>136</sup>Kilcullen, 45-47.

<sup>137</sup>JP 3-07, III-42.

however serve the interests of bad actors and potential spoilers. It is important to understand and respect them to the extent that this is not the case and that are conducted within international human rights norms.<sup>138</sup> JP 3-24 also advises commanders to respect these systems with the same caveats concerning human rights.<sup>139</sup> Huntington provides a historical account of cultural context in explaining how the United States Constitution and legal system came to be based on fundamental law just as modern law was gaining favor in Europe.<sup>140</sup> This discussion can serve in aiding recognition of our own cultural context and biases and in helping us understand the basis of potential HN legal thought. Cultural context is also important in helping us understand what should be the appropriate scope of an HN legal system. Some disputes are better handled through a bureaucratic or informal process and the formal system may lack the resources to handle every trifling matter. Legal coercion can also be expensive and contrary to local norms.<sup>141</sup>

JP 3-07 asserts that the law should be easily accessed and understood and should be stable enough to allow individuals to plan their affairs, that the state should be bound by law and not act arbitrarily, and that individuals should be secure in their persons and property.<sup>142</sup> These principles describe certainty and predictability. Legitimate rule of law has the effect of holding government accountable, setting a predictable legal environment enabling long term plans without fear of capricious government interference, engenders confidence in the public that changes to the law will take place when necessary but within a framework of continuity,

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<sup>138</sup>Ibid.

<sup>139</sup>JP 3-24, III-13

<sup>140</sup>Huntington, 94-99.

<sup>141</sup>Call and Wyeth, 125.

<sup>142</sup>JP 3-07, III-41.

empowers individuals to conduct wider commerce within the formal system.<sup>143</sup> Certainty and predictability enabled by the rule of law can be a driver of investment and broader, more permanent economic growth.<sup>144</sup> The doctrine generally captures the best theory and understanding of practice as contained in the literature concerning the rule of law but does so in less detail perhaps leaving the practitioner short when it comes to implementation.

#### PRIVATE PROPERTY RIGHTS

The discussion on private property rights is not as well developed in the doctrine as those on security and rule of law. Property rights generally fall under either of those two more broad headings. There is a growing body of literature which suggests that private property rights codified and backed by the rule of law are essential to durable S&R operations. The doctrine does capture some of this however there is room for further development of the concept. This is demonstrated by the discussions of property rights as a necessary component of the social contract. We will define the social contract in this context as an agreement to peaceably enforce lesser agreements and to resolve disagreements regarding advantages and disadvantages.<sup>145</sup> In Afghanistan this enforcement and resolution occurs almost entirely through customary law. There is some potential though to fold the customary into the formal system thereby increasing the scope of governance and building legitimacy. This is demonstrated by the discussion on the right of return of IDPs and refugees post bellum using Bosnia and Herzegovina as an example. Finally the economic benefits of private property rights demonstrate a gap in the doctrine. The literature

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<sup>143</sup>Ghani and Lockhart, 126.

<sup>144</sup>Stromseth et al., 58.

<sup>145</sup>Geoffrey Demarest, *Property & Peace: Insurgency, Strategy and the Statute of Frauds* (Fort Leavenworth, KS: Foreign Military Studies Office), 8.

discusses these in terms of property as a fungible asset, as facilitating access to capital, and as ameliorating the conditions conducive to an insurgency.

### Private Property Rights in Scholarly Literature

The literature discusses formalized private property rights as an essential and necessary component of the social contract. In order to enable peaceful dispute resolution in accordance with this contract it is first necessary to establish a private property system. This system should establish in detail who owns what and in what quantity, enforce contracts and resolve disputes peacefully. This logically leads to a role for government. The term “government” does not necessarily imply a large, federal, national or even local government. Rather it implies any organizational construct bearing the authority to enforce contracts, resolve disputes, weigh evidence, and potential tax.<sup>146</sup> Here as well we must consider cultural context. At this local level, the operational artist has the greatest ability to influence the system.

The literature demonstrates that informal systems to settle property disputes will arise to compensate for the lack of or dysfunctional formal system through the case of land tenure in Afghanistan. Land tenure is a type of property right defined as the relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land.<sup>147</sup> In Afghanistan, there are frequently multiple claims on a single piece of land. Each of these claims has its own sliver of historical legitimacy and the documents substantiating these claims are generally plural, complex, uncertain, incomplete and unenforceable.<sup>148</sup> In order to provide context

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<sup>146</sup>Ibid., 4-10.

<sup>147</sup>Food and Agriculture Organization of the United Nations, *Land Tenure and Rural Development* (Rome: Food and Agriculture Organization of the United Nations, 2002), 7.

<sup>148</sup>Liz Alden Wily, “Land Rights in Crisis: Restoring Tenure Security in Afghanistan,” Afghanistan Research and Evaluation Unit (March 2003): 1.

for the discussion of land tenure in Afghanistan, a discussion of the legal framework for landholding is in order. There are five broad categories of property law in Afghanistan: customary law (*rawaj*), civil law (*qanon madani*), religious law (*shar'ia*), state law (*statutory or national law*), and Constitutional law. Customary law dictates how land ownership is managed in accordance with community practice and group norms.<sup>149</sup> These are rarely formally recorded and evolve over time. An example of this is that of Pashtunwali, the Pashtun customary law which is prevalent in many areas of southern Afghanistan. Civil law is primarily based on Islamic Law principles and was codified in the 1970s based on the Hanafi school of Islamic Law. Religious or Shar'ia law consists of laws as interpreted literally from the Qur'an and applies when a dispute is not covered by civil law. State law includes supreme law and sector law. Sector law is a subcategory of state law which deals with agriculture, taxation and housing.<sup>150</sup> State law consists of decrees and edicts issued by past Afghan kings and presidents. Predictably, this has had the effect of making state law confusing and contradictory. Notably, state law contains a series of Taliban edicts from 1999-2000 which address land and property rights.<sup>151</sup> Constitutional law is the supreme law of Afghanistan.<sup>152</sup> It provides generally that persons will be secure in their property, free from unlawful search and seizure, and that foreigners cannot own land in Afghanistan. It does not address any specific details of land tenure or property law.<sup>153</sup>

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<sup>149</sup>Ibid., 3.

<sup>150</sup>Ibid.

<sup>151</sup>Ibid., 3-4

<sup>152</sup>Ibid.

<sup>153</sup>“The Constitution of Afghanistan” (Islamic Republic of Afghanistan, 26 January 2004).

Given this confusing legal tapestry, it is not surprising that land tenure insecurity is widespread and leads to frequent, often armed, conflict.<sup>154</sup> The GIROA's lack of a capability to effectively manage land tenure is exacerbated by this complexity.<sup>155</sup> The finite resources and time on the part of plaintiffs relative to the resources and time required to navigate the formal mechanisms for resolution further dilutes the GIROA's reach and legitimacy by making community based and ad hoc mechanisms the default solution for land disputes.<sup>156</sup> Scarcity of consistent legal documentation of property rights necessary for dispute resolution within the government framework, such as land titles, also tends to push rural landholders toward the community based mechanisms.<sup>157</sup> In 2010 around 90 percent of all property cases were handled through community based or customary channels. Rural Afghans generally perceive these mechanisms as more efficient, less expensive, and less corrupt than the government systems. It follows then that decisions made through more traditional means, such as a Jirga or shura, would also be perceived as more legitimate as this means typically pre-date the government structure and are grounded in local norms and traditions.<sup>158</sup> There are, however, particular categories of plaintiffs which favor the formal systems. Specifically those who have returned from extended periods abroad and thus may not be ingratiated with the local power structure. Those who have credible documentation and/or significant financial resources also may stand a better chance at favorable resolution in the government channels. Finally, the government system is increasingly

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<sup>154</sup>Wily, 5-6.

<sup>155</sup>Colin Deschamps and Alan Roe, "Land Conflict in Afghanistan," in *The Rule of Law in Afghanistan: Missing in Inaction* (Cambridge: Cambridge University Press, 2011), 208.

<sup>156</sup>*Ibid.*, 208-209.

<sup>157</sup>*Ibid.*, 210.

<sup>158</sup>*Ibid.*

favorable in more urban areas where the reach and capacity of the GIROA is much greater.<sup>159</sup>

However, in Afghanistan the rural population significantly outnumbers the urban and it is in the rural areas where land claimants typically turn to customary law to sort out land disputes.<sup>160</sup> This reliance on systems separate from the authority of the constitutional government undermines both its legitimacy and its capability to conduct long range rural development planning.<sup>161</sup> This is an obvious hindrance to state building efforts in general and endogenous ones in particular.

The case of Afghanistan demonstrates that property rights are of tremendous value to individuals regardless of relative wealth or poverty and that an institution's ability to protect those rights or mediate disputes involving them is a determinate of its legitimacy. How then can we reconcile the legitimacy and practical effectiveness of the customary law based informal system with the statebuilding imperative to extend the reach of government, promote the rule of law, and create the perception of legitimacy? The literature suggests that in a rural, tribal society such as Afghanistan an approach could be to create formal structures endorsed by the GIROA which are based upon customary law.<sup>162</sup> Undoubtedly there are Afghan communities which already have the capability to manage their own land relations. There are obvious drawbacks to this approach. It has been demonstrated by the Karzai administration that the GIROA will be understandably hesitant to delegate power to local actors which it deems as unsavory or threatening. Local customs will also generally be less in line with international norms than would the GIROA. It is likely that women and persons of a different tribe than the local majority will not always receive a

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<sup>159</sup>Ibid.

<sup>160</sup>Ibid., 208, 210.

<sup>161</sup>Ibid., 210.

<sup>162</sup>Wily, 70.

fair hearing.<sup>163</sup> There is some evidence in the experience of NGOs in Afghanistan that incremental progress is possible in this regard however.<sup>164</sup>

The formal court system and customary law based systems each have their strengths and weaknesses. By putting the two in a complementary relationship with each other many of these weaknesses can be minimized.<sup>165</sup> In order for property rights to realize their full value, they must be backed by a credible and consistent legal framework.<sup>166</sup> As such, this complementary system would have to include a codified accumulation of norms that would ultimately lead to practical policy and law.<sup>167</sup> Afghanistan has a “socio-spatial basis in *manteqa* which could be a viable spatial framework.” Manteqa literally translated means “area or location.” In this context it refers to a grouping of related village communities that cooperate and make decisions with common consequences as a unified block. As these units are functional to an extent defined by social interaction and well defined geographic boundaries, the potential exists to leverage this construct to codify and normalize the entire range of property law.<sup>168</sup>

Private property rights as a tool to facilitate the right of return of IDPs and refugees after the cessation of hostilities is demonstrated in the literature through the example of the administrative claims process used to return Bosnians to their homes from 1998-2004. The Dayton Agreement signed in 1995 to end the hostilities in Bosnia and Herzegovina explicitly

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<sup>163</sup>Ibid., 70-71.

<sup>164</sup>Ibid.

<sup>165</sup>Deschamps and Roe, 221.

<sup>166</sup>Hernando de Soto, *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else* (New York: Basic Books, 2000), 157.

<sup>167</sup>Wily, 157.

<sup>168</sup>Ibid.

stated that refugees and IDPs had the right of return to their homes.<sup>169</sup> However the international mission itself was ambivalent about ethnic reintegration, which many observers thought would be destabilizing and risky for the individuals concerned. Bosnian refugees compelled to return following the termination of temporary asylum in Western Europe tended to relocate to majority areas, rather than return to their original homes.<sup>170</sup> In 1998 the international mission made a deliberate decision to make return and repossession of property a high priority. The problem was reframed from one of ethnic reintegration to one of individual property rights and the rule of law.<sup>171</sup> An administrative claims process for repossession of property was created and was understood by the population given the intrinsic respect for property rights in Bosnian society. The implementation of the property laws was supported by close monitoring, constant political pressure, and targeted reconstruction assistance.<sup>172</sup> To keep up the momentum, a list of property implementation statistics was published on a monthly basis. This placed pressure on each of the 142 municipalities to keep up with the average in order to avoid being labeled as obstructive. Once the system had been institutionalized into a clear set of procedures and legal entitlements with the displaced persons themselves bought completely into the system, the system endured to a successful conclusion. By March 2004 more than 200,000 of 217,000 claims for return of property had been successfully processed and the program was concluded.<sup>173</sup> This demonstrates

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<sup>169</sup>Marcus Cox, "Bosnia and Herzegovina: The Limits of Liberal Imperialism," in *Building States to Build Peace*, ed. Charles T. Call and Vanessa Wyeth (Boulder: Lynne Rienner Publishers, 2008), 256.

<sup>170</sup>*Ibid.*

<sup>171</sup>*Ibid.*, 256-257.

<sup>172</sup>*Ibid.*, 257.

<sup>173</sup>*Ibid.*

how a relatively simple bureaucratic claims process can help to heal what was once considered a vicious and intractable ethnic divide.

The literature further enumerates the benefits of private property rights through discussion of their basic nature and economic benefit. Property rights documented in a credible legal system allow the owner access to the stored value of the property. The function of law is not intended to represent the physical reality of real estate but rather to provide a process by which owners can extract potential surplus value from those assets, thus giving them a greater stake in the system.<sup>174</sup> One of the most important things a formal property system does is transform assets from a less accessible condition to a more accessible condition so that they can be put to their highest use. Unlike physical assets, representations are easily combined, divided, mobilized, and used to conduct financial transactions.<sup>175</sup> By uncoupling the economic features of an asset from its rigid physical state, a representation makes the asset fungible. Fungible assets can be fashioned to suit practically any transaction.<sup>176</sup> Property is a concept separate from the asset. For instance, when a house is sold, nothing physically changes. Property is not the house itself but an economic concept about the house as supported by legal documentation. These property representations give the owners access to their latent social and economic qualities and any surplus value. Legally recognized property rights allow an owner to transcend the physical world of the asset and enter the conceptual world of capital where the asset can be used to its fullest potential.<sup>177</sup>

The literature discusses the economic benefits of formalized private property rights as necessary to ameliorate the conditions which lead to insurgency and revolutionary war. Geoffrey

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<sup>174</sup>Soto, 157.

<sup>175</sup>Ibid., 56.

<sup>176</sup>Ibid.

<sup>177</sup>Ibid., 50-51

Demarest goes so far as to suggest that this should be emphasized during S&R operations with the same urgency as human rights prosecutions, fair elections, and intelligence gathering.<sup>178</sup>

Private property rights contribute to the ability of owners to participate in the economy as previously discussed. This has the potential to reduce the perception of inequality and unfair advantage on the part of a government or ruling class. A formalized property system can also deny insurgents a range of benefits that they would enjoy under an informal one.<sup>179</sup>

Two critical characteristics of a property system must be present to realize these ends: formality and liberality. Formality refers to precise, transparent, and stable evidence regarding who owns what and in what quantity. Without formality any dispute or legal process may be subject to corruption, extortion, or dishonesty.<sup>180</sup> A liberal property system is one which broadens both the range of owners and the range of rights within the bundle which they enjoy. This leads to a flexible, precise, and efficient real estate market in which a broad cross-section of society may participate.<sup>181</sup> Failure to establish either of these conditions has the obvious potential to reinforce the perception of inequality, reduce the legitimacy of the HN government and open the door for informal systems to flourish. Insurgents can capitalize on all of these failures to reinforce their narrative and take advantage of an informal or failed system.

Demarest defines eight benefits for insurgents of informally owned land: Taxation, free trade, sanctuary, clandestine manufacture or processing, staging for violent operations, safe

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<sup>178</sup>Demarest, *Property & Peace*, 4-5.

<sup>179</sup>Geoffrey Demarest, "Urban Land Use by Illegal Armed Groups in Medellin," *Small Wars Journal* (17 October 2011): 1.

<sup>180</sup>Demarest, *Property & Peace*, 12.

<sup>181</sup>*Ibid.*

transit of contraband, recruiting, and as a prison or graveyard for victims.<sup>182</sup> In the case of the *Comuna 13* neighborhood of Medellin, Columbia, the Revolutionary Armed Forces of Colombia (FARC) and other insurgent groups were enjoying all of these benefits to some degree or another.<sup>183</sup> In October 2002 the Colombian military and civilian law enforcement agencies launched an integrated and sustained campaign to pacify and control the city, in particular *Commua 13*. In addition to establishing a comprehensive and permanent government presence throughout *Comuna 13*, the government formalized property rights, street names, and addresses. This enabled the police and the military to conduct a census and build a database which they could use to accurately serve warrants and profile likely insurgent locations.<sup>184</sup> Based on this analysis the police and military were able to reallocate resources on the most contentious terrain. The net result has been an marked decrease in violence and an increase in sustained development which continues today.<sup>185</sup>

#### Private Property Rights in Doctrine

JP 3-24 and 3-07 both highlight the need for the stability and reconstruction force to establish mechanisms to resolve property disputes, particularly when it concerns the right of return of IDPs or refugees.<sup>186</sup> JP 3-07 states that “all individuals displaced from their homes by violent conflict have the option of a safe, voluntary, and dignified journey to their homes or to new resettlement communities; have recourse for property restitution or compensation; and

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<sup>182</sup>See Demarest, “Urban Land Use” for a detailed discussion of these benefits in relation to FARC, other insurgent groups, and the Colombian government.

<sup>183</sup>*Ibid.*, 3-8.

<sup>184</sup>*Ibid.*, 3-9.

<sup>185</sup>*Ibid.*, 9-10.

<sup>186</sup>JP 3-24, VIII-18; JP 3-07, III-10.

receive reintegration and rehabilitation support to build their livelihoods and contribute to long-term development.”<sup>187</sup> JP 3-07 also discusses the urgency of property dispute resolution by an impartial judiciary in order to prevent such disputes from turning violent.<sup>188</sup>

### Comparison of Private Property Rights in Doctrine and Literature

JP 3-24 and 3-07 discuss property dispute resolution as critical to S&R but not as a stand-alone topic. The literature discusses in detail informal and customary law and the potential to integrate it in to the formal system. There is some discussion of this in the rule of law sections of the doctrine however. The doctrine also highlights the need to facilitate the right of return of IDPs and refugees to their rightful homes. The literature provides a practical example of how this may be accomplished through the administrative claims process which successfully facilitated the return of over 200,000 Bosnian refugees to their homes.<sup>189</sup> The doctrine however makes no mention of the potential economic benefits of private property rights toward developing a stable and prosperous economy. Because private property rights are only discussed only briefly in other sections of the doctrine in terms of dispute resolution and right of return and without specifics, doctrine does not capture best theory and understanding of practice of this topic.

### CONCLUSION

Doctrine only partially addresses stabilization and reconstruction operations in terms of the best theory and understanding of practice from scholarly literature as proven by an examination of the language of security, rule of law, and private property rights.

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<sup>187</sup>JP 3-07, III-22.

<sup>188</sup>Ibid., III-47.

<sup>189</sup>Marcus Cox, 256-257.

Doctrine partially captures the body of thought pertaining to security as demonstrated by the consistency between its assertion of security as foundational to other S&R efforts and the literature's concurrence with this as well as its discussion of security as interdependent with other S&R functions. Doctrine is consistent with literature in terms of security as necessary for legitimate governance as well. Doctrine encapsulates the footprint and duration dilemmas discussed in literature as a tool for arriving at the right size and scope of the S&R force. Doctrine is inadequate due to the exclusive focus on population-centric COIN in JP 3-24 and FM 3-24. It prescribes that all insurgencies can and should be addressed in this manner. Even one of the most oft-cited foundational proponents of population-centric COIN, David Galuala, discusses at length conditions in which insurgencies are vulnerable to lethal action on the part of the COIN force. Lack of any discussion of these potential situations in doctrine deprives commanders of a critical tool with which to destroy an insurgency in its infancy and secure the population without having to conduct population-centric COIN.

JP 3-24 and FM 3-24 prescribe the set of tactics describing population-centric COIN as *the* way to conduct COIN. Division and Corps commanders are responsible for linking tactical actions to the national strategic objectives. JP 3-24 and FM 3-24 prescribe these tactics however. In this regard the tactics have become the strategy. This obviates the need for strategic thought and operational art. Population-centric COIN requires a large footprint approach and is doctrinally tantamount to statebuilding. In addition to precluding operational art current doctrine also prescribes one strategy in terms of dealing with an insurgency.

I recommend that the Joint and Army Staffs conduct a thorough revision of JP 3-24 and FM 3-24. This revision should incorporate a more broad understanding that goes beyond population-centric COIN. The new manuals should not prescribe tactics and offer several templates for designing an operational approach, with population-centric COIN being but one. A good starting point would be Bard E O'Neill's *Insurgency & Terrorism: From Revolution to*

*Apocalypse*. This suggests several different types of insurgency and approaches to counter each one specifically.

Of the three conditions discussed in the monograph doctrine best captures the body of thought pertaining to the rule of law. This is demonstrated by the discussion of rule of law as interdependent with need for the state to maintain a legitimate monopoly on the use of force. It is further evidenced by the acknowledgement and respect of cultural and local context as critical to the establishment of legal systems. Finally, doctrine adequately captures the body of scholarly thought through the discussion of rule of law as providing certainty and predictability. Though the doctrine discusses the importance of rule of law as providing the state with a legitimate monopoly on the use of force, it does not expand significantly upon this theme. The literature goes into much greater depth in terms of potentially preventing vigilante justice and human rights abuses.<sup>190</sup> Literature also points out that the lack of a monopoly on the legitimate use of force can enable informal legal systems administered by organizations not necessarily aligned with US interests or those of the HN.<sup>191</sup> The literature also goes into greater depth in terms of rule of law as a source of certainty and predictability. Rule of law instills confidence in the public that laws can and will be changed when necessary but remain intact within the system overall. This confidence also enables individuals to engage in commerce within the formal system without fear of capricious government confiscation. When these conditions are seen as permanent then the rule of law can act as a driver of long-term economic growth.<sup>192</sup> Though the doctrine covers the topic in broad terms, the lack of depth may leave the practitioner short in terms of implementation.

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<sup>190</sup>Stromseth et al., 59.

<sup>191</sup>Ghani and Lockhart, 130.

<sup>192</sup>Ghani and Lockhart, 126; Stromseth et al., 58.

Doctrine does not adequately capture the current best theory and understanding of practice concerning private property rights. The doctrine does recognize local and informal mechanisms for resolution of property disputes but does not discuss integration in to the formal system as a solution. The doctrine also mentions briefly the criticality of facilitating the right of return for refugees and IDPs but does not provide any specific suggestions on methods for accomplishing this such as the Bosnia example discussed in the literature. Finally, the doctrine makes no mention of the economic benefits of private property rights. This is a critical omission because a growing body of literature suggests that establishing a detailed and transparent system of private property rights can both deny an insurgency critical capabilities such as sanctuary and reduce or eliminate the root causes of insurgency. When governments create and maintain a detailed and transparent private property system they can deny insurgents sanctuary through a census and the knowledge of who belongs where. Military and law enforcement agencies can analyze this data to best determine where to place resources to best combat the insurgency. Denying insurgent sanctuary obviously denies them from other benefits which they would otherwise derive from informal land such as taxation, free trade, clandestine manufacture or processing, staging for violent operations, safe transit of contraband, recruiting, and as a prison or graveyard for victims.<sup>193</sup> A formal property system can reduce or eliminate the root causes of an insurgency through providing owners with access to the stored value of their property by converting it from a strictly physical asset to a fungible bundle of rights which can be traded individually or in total. This creates capital and drives economic growth.<sup>194</sup> These effects result in

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<sup>193</sup>Demarest, "Urban Land Use," 1-10.

<sup>194</sup>Soto, 50-56.

wealth creation and give property owners a stake in the formal system.<sup>195</sup> These effects also have the potential to reduce the root causes of insurgency such as perceived inequality and privation.

I recommend further research and a review of S&R doctrine in order to incorporate the most recent best theory and understanding of practice regarding private property rights. This review should focus specifically on three areas. Research should first focus on the feasibility of linking informal and customary property law to the formal system. An approach such as this has the potential to provide access to dispute resolution and access to the broader market without forcing a top-down system over one which already enjoys popular legitimacy. Second any research should focus on property rights and land titling programs as a way to deny insurgents the benefits which they can derive from informal land. Geoff Demarest's *Property & Peace* provides a thorough discussion of both the how to and the why of these efforts. Finally, I recommend that private property rights and land titling be given greater consideration in S&R doctrine in terms of their potential economic benefit. This benefit is good in its own right in terms of increasing prosperity as well as ameliorating conditions favorable to an insurgency.

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<sup>195</sup>Ibid., 157.

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